amount and value of the property owned by a public service company, and the relation between that value and the amount of securities outstanding, in forming an opinion as to the soundness of the company's securities. It is not material to him that the property was in part acquired from the investment of net earnings, except as that indicates the conservative policy of the owners. The important facts are the value of the property and the quality of the company's title to it. If, as has been herein asserted, net earnings and property acquired with them are exclusively the company's, then the property so obtained should be included in valuation made for any purpose. If the stockholders prefer to reinvest the profits in the business and do so by leaving them there as surplus, rather than to take them out in cash dividends and put them back again as the purchase price of securities, the resulting additions to the company's property are identical as to ownership, sale value, and value for rate-making purposes. These conclusions seem inevitable.

There are so many collateral phases which have a bearing on the matter under discussion that it would be difficult to exhaust the subject in a paper of reasonable length. It is hoped that the arguments advanced adequately support the conclusions reached, which may be summarized as follows: (1) That net earnings are the property of the stockholders, and, therefore, property acquired with net earnings is likewise the property of the stockholders; (2) that it is better to invest a portion of the earnings in improvements, and subsequently capitalize them after a liberal surplus has been created, than to pay out all net earnings in cash dividends and sell securities to provide funds for all improvements; (3) that valuation has to do with the property owned and not the source from which funds to acquire it were obtained; and (4) therefore, property obtained from net earnings should be included in a valuation for any purpose.

ALBERT W. BULLARD

CHICAGO, ILL.

A RECENT ENGLISH CASE ON WOMEN AND THE LEGAL PROFESSION

Those concerned with improving the situation of gainfully employed women hold two objects constantly in view. The one, more appealing, more concrete, more constantly inviting exertion, is the effort to obtain efficient and adequate protection for the great mass of untrained and unskilled girls and women who offer their services under conditions of real disadvantage in the labor market. The other object is that of

opening up new opportunities for employment for women, and particularly for employment requiring training and offering a career. The reasons for these efforts are, briefly, that, at one end of the scale of social and economic well-being, the weakness of women as bargainers works itself out obviously in wage bargains which reduce the workers below the level of physical and social efficiency; and that these women whose need of protection is so obvious suffer perhaps chiefly from the same influence which affects the women of the well-to-do group, namely, serious limitation of opportunity for employment. Miss Abbott[1] has pointed out that the position of the industrial women altered little in this respect during the nineteenth century. During the last thirty years, the opportunities as salesgirls, as bookkeepers and accountants, stenographers and telephone operators have offered new opportunities which made possible the employment of thousands of women in what have been termed routine mental occupations. In some cases, as in salesmanship, these occupations require practically no training and length of experience means very slight increase in pay.[2] In some, as in stenography and bookkeeping, training in a business course is essential and there are some positions offering, with length of experience, increasingly ample rewards, as in the case of women who act as court reporters, but they rarely appeal to the type of women corresponding to the men who enter the professions or attain leading positions in "big business." If women of favorable social position and those who are reasonably well-to-do could go readily into such occupations as occupy the men of their group two things would happen. In the first place, less favorably situated women would work their way up as poor boys work their way up, from less favorable occupations into the professions or into good business positions; in the second place, the general attitude toward women's employment could be more rapidly altered, so that at many points at which the question of women's employment arises and is now determined by prejudice or by ancient practice and habit, the decision might be rendered according to considerations of efficiency. It is therefore of greatest importance that all legal barriers to the employment of women be removed as rapidly as possible. After the legal barriers are down spiritual barriers can be gradually removed; but the general habit of thought with reference to any occupation hitherto closed will remain unaltered so long as it is legally impossible for women to enter that

[1] Edith Abbott, *Women in Industry*, chap. iii.

[2] 61st Cong., 2d sess., Senate Document No. 645, *Woman and Child Wage Earners*, Vol. V.

occupation and to prove or disprove their fitness to pursue it. On this account the admission of women to the legal profession has an interest greater than would be suggested by the number of women who have been admitted to the practice before the courts of the country.[1] To be sure, the importance of opening up a new occupation is not the only significance of this development, important as it may be. Much of the work of women lawyers is inconspicuous work done as relatively successful lawyers, but many are doing a special service in the direction of socializing the administration of justice; they are handling for the poor or less well-to-do the domestic cases in which a great mass of misery is involved for women and children; they are preparing briefs on legal questions involved in public issues which are often argued ostensibly by public officials. In one court[2] an "assistant to the judge of the Juvenile Court" hears and decides the cases of the delinquent girls. But whether or not they are adding this peculiar value to their services, each one who manages to keep her professional head above water gives promise of a time when women who wish to use their powers and earn their living will not find the way so narrow or the struggle so difficult as at present.

The opportunity for women to practice law has been secured variously in different states. In some states, as in Kentucky, the highest court of the state has suffered women to submit to the tests required by law of applicants for admission to the bar. This has meant the opening of a new avenue of employment and interest to women without either litigation or legislation. In some states, as in Indiana,[3] women applicants have been at first denied and then, on pushing their claim by the appropriate process to the highest court, have been admitted. This has meant litigation but not legislation. In other states, as in Illinois, the courts have denied at every point the right of the women without legislative grant to be admitted to a profession which they have never before entered. The result of such a decision[4] has been either a legislative act, as in Illinois,[5] providing that sex shall be no barrier to employment in any occupation or profession, or an amendment to the constitution, as in California,[6] to the same effect.

[1] The Census reports 75 women lawyers in 1880; 208 in 1890; 1,010 in 1900; 1,343 in 1910. They were found in 1910 in all the states except Idaho, New Hampshire and North Carolina. See *Thirteenth Census of Occupations*, pp. 55, 93.

[2] Cook County, Illinois.

[3] *Re Leach*, 134 Ind. 665.

[4] *Bradwell* v. *The State*, 55 Ill. 535.

[5] *Illinois Revised Statutes*, chap. 48, sec. 3.

[6] Constitution of California, Art. 30, sec. 18.

In some states the courts have denied the application of women and it has been difficult to secure the appropriate legislation. This is the situation which confronts British women who have been trying for the past fourteen years to obtain admission to this profession from which they are shut out simply by the ancient negative, "women have never done it." It is interesting to notice that lack of ability is never urged as a reason for excluding them, and indeed in the face of the brilliant pleading done by many women who have argued their own cases in demanding the ballot[1] and by the militants in defending themselves against criminal charges, such reasons could not be alleged.

In the light of a case recently decided and reported in the *Canadian Law Times*[2] it is interesting to recall two other efforts which have been made, likewise without avail, on the part of British girls. In 1900 Margaret Hall,[3] a Scottish girl, applied to the Board of Examiners of the Society of Law Agents to be admitted to examination for admission to their society. This society, under the statute,[4] regulates the admission to the practice of law in Scotland. The statute in referring to applicants for admission used the word "person," and Miss Hall, calling attention to the fact that, under the Factory acts, the term "inspector" was interpreted as including both sexes so that women inspectors had been allowed to conduct complaints arising from violations of that act without special authorization, based her claim to admission to practice generally on the ground that she came under the statutory term, *person.* On the refusal of the law agents, she appealed the case to the highest court which denied her claim on the ground of "inveterate usage" only.

In 1903, Miss Bertha Cave applied to the Benchers of Gray's Inn for admission to the examinations held under their auspices; that is, she applied for permission to qualify as a barrister.[5]

[1] *Chorlton* v. *Ling*, L.R. 4 C.P. 374 (1868); *Nairn* v. *St. Andrews*, 1909, L.R.A.C. 147.

[2] 1913 W.N. 355. C.A. *Canadian Law Times*, July, 1914.

[3] *Hall* v. *Incorporated Society of Law Agents*, Court of Sessions Cases, Fifth Series, III, 1059.

[4] L.R., 13 and 14, Vict. C. 21; L.R., 36 and 37, Vict. C. 63.

[5] In the *Law Journal* for March 28, 1903 (XXXVIII, 152, 164), her intention to apply was commented on. The editors of the *Journal* in somewhat flippant tones admit that "there are appropriate spheres of activities for women, as, for example, medicine, since women can properly care for sick women, but law is not among these proper spheres of activity. . . . . And since the administration of justice is a matter of national concern and the admission of women would lessen the fierceness of the struggle in which the opposing counsel attempted to protect the interest of their respective clients, the admission of women would certainly damage the profession."

Attention should be called to the conditions under which a person becomes a "barrister." The four Inns of Court, i.e., Lincoln's Inn, Queen's Temple, Middle Temple, and Gray's Inn, private unincorporated societies, consisting of three groups of members, Benchers (the governing body), Barristers (the general members,) and Students, have authority by ancient custom to determine the conditions of admission to their own group, and thus to the practice of the profession. Their powers and their relation to the court are thus described by the Earl of Halsbury in his monumental treatise on the *Laws of England*.[1]

"The right of practising as counsel in England is reserved to barristers, that is, to those who have been 'called to the bar' by one or other of the four Inns of Court. The Inns of Court are the societies of Lincoln's Inn, the Inner Temple, the Middle Temple, and Gray's Inn; they are voluntary unincorporated societies of equal rank and status, independent of the State, which have each a similar constitution, and are bound by the same rules; they are outside the jurisdiction of the courts, but are subject to the visitatorial jurisdiction of the Judges. These societies have existed from very ancient times; they seem originally to have been associations of the apprentices (*apprenticii ad legem*), a name which is found in use at the end of the thirteenth century to denote those legal practitioners who were not serjeants-at-law (*servientes ad legem*), but from whose ranks the serjeants were chosen. . . . . Of these Inns the principal were the four Inns or Houses of Court which still remain. . . . . In these Inns the apprentices lived a semi-collegiate life, and were subject to a common system of education, discipline, and government. . . . . After being "usually in commons," and "keeping the case" in hall, and performing a competent number of moots in the house to which he belonged, and in one of the Inns of Chancery, the member, when of seven years' standing from admission, could be called to the utter bar.

"The possession of the degree of barrister was recognized by the judges as a necessary qualification without which no one could practice as an advocate in the courts, and thus the benchers became the sole authority by which the position of advocates in the courts could be conferred or taken away. All power which they have in this respect is said to be delegated to them from the judges."

The situation with reference to admission to a public profession seems incredible to the student who expects decisions of such general concern to be based on unprejudiced judgment. The power to decide rests in this case with a voluntary society composed of those persons probably least able in all the world to judge after an unbiased fashion concerning the claims of women, namely, members of an exclusive

[1] II, 389 f.

group whose history as a group dates from "ancient times," whose members preserve the most ancient ideas concerning the sphere of women.

The Benchers of Gray's Inn quite naturally then denied Miss Cave's application, which was appealed finally to a committee of seven justices sitting in the House of Lords, under the chairmanship of the Lord Chancellor, who, in private proceedings, lasting not more than five minutes during which Miss Cave made her own appeal, confirmed the decision of the Benchers and denied her application.

In 1913, a third effort was made. This time, a Miss Bebb applied for admission to the Society of Solicitors, an incorporated society,[1] which, under a statute, enacted in 1843 with later amendments, regulates admission to practice as a solicitor. Her application was denied because of her sex and she brought action, claiming, as Miss Hall had claimed before the Scotland Court, that she was a "person" under the act.[2] Her argument was to the effect that (1) negative usage alone should not prevail in the light of changed circumstances which make possible preparation not available at early periods; (2) that there was sufficient affirmative ancient usage to justify her claim, since Queen Eleanor had acted as Keeper of the Great Seal in 1253, a woman had held the office of Second High Constable in 1569, and women had held such public positions as sexton, overseer of the poor, and governor of a workhouse. Miss Bebb's claims were, however, denied by both lower and

[1] L.R., 6 and 7, Vict. C. 73.

[2] "II. *And be it enacted*, That from and after the passing of this Act no person shall act as Attorney or Solicitor, or as such Attorney or Solicitor sue out any Writ or Process, or commence, carry on, solicit, or defend any Action, Suit, or other Proceeding, in the Name of any other Person or in his own Name, in her Majesty's High Court . . . . unless such Person shall have been previously to the passing of this Act admitted and enrolled and otherwise duly qualified to act as an Attorney or Solicitor under or by virtue of the Laws now in force, or unless such Person shall after the passing of this Act be Attorney or Solicitor, pursuant to the Directions and Regulations of this Act, and unless such Person shall continue to be so duly qualified and on the Roll at the Time of his acting in the Capacity of an Attorney or Solicitor as aforesaid.

"III. *And be it enacted*, That, except as herein-after mentioned, no Person shall, from and after the Passing of this Act, be capable of being admitted and enrolled as an Attorney or Solicitor, unless such Person shall have been bound by Contract in Writing to serve as Clerk for and during the Term of Five Years to a practising Attorney or Solicitor in *England* or *Wales*, and shall have duly served under such Contract and for and during the said Term of Five Years, and also unless such Person shall, after the Expiration of the said Term of Five Years, have been examined and sworn in the Manner herein-after directed; Provided always, that any Person who now is or shall hereafter by bound of Contract . . . ."

upper courts on the ground of ancient usage and on the authority of a passage in the *Mirror of Justices* quoted quite incidentally by Coke.

It may be that Parliament will give recognition to the patriotic and devoted way in which women are throwing themselves into the services incident to the war emergency and will remove by legislation these and other professional limitations which have retarded the economic advancement of women and have been the occasion of great injustice and of resulting bitterness.

SOPHONISBA P. BRECKINRIDGE

UNIVERSITY OF CHICAGO

WASHINGTON NOTES

THE NEW 5 PER CENT RATE DECISION

In handing down a decision in the 5 per cent rate case on December 18, the Interstate Commerce Commission largely reverses the earlier decision rendered in July last by permitting the flat 5 per cent increase asked by the roads to be granted in so far as it applies to the great mass of commodities. Those to which it does not apply are, for the most part, the heavier products, such as coal, which are, however, the staple of the freight of certain roads. The advance in income to be derived from the decision is therefore not nearly so much as it would have been had the increase not been restricted by excepting so large a percentage of the heavy freight of the roads. Estimates indicate that the gross increase in freight revenue granted by the decision will amount to $30,000,000 annually; the amount which the roads had hoped to get through a general 5 per cent increase was estimated at $50,000,000 when their case was first presented to the Commission. It appears that the attitude of the Commission has materially altered, and the explanation given for this change is that new conditions arising out of the European war have developed. Not only are the roads obliged to meet higher expenses and pay higher wages, but they must also bear the greater expenses of providing capital under the more difficult conditions existing in the market at the present time, owing to the destruction of wealth in Europe and the consequently higher rates of interest which will inevitably prevail in all financial markets. It was consequently deemed right to grant the roads increased revenue to enable them to carry these burdens. The decision of the Commission is surprising for it was quite generally felt at the time of the last hearings before that body that the roads had not succeeded in strength-